

COUNTY OF HAWAI'I PLANNING DEPARTMENT
RECOMMENDATION

**DPM ACQUISITION LLC, dba DIAMOND RESORTS INTERNATIONAL
(FORMERLY PACIFIC MONARCH RESORTS, INC.)
AMENDMENT TO SPECIAL MANAGEMENT AREA USE PERMIT NO. 388**

Upon careful review of the applicant's request against the guidelines for approving amendments to a Special Management Area Use Permit, **the Planning Director is recommending that the request be approved by the Planning Commission.** Since this recommendation is made without the benefit of public testimony, the Director reserves the right to modify and/or alter this position. This approval recommendation is based on the following findings:

The applicant is requesting a five-year time extension to comply with Condition No. 2 (time to complete construction) of Special Management Area Use Permit No. 388, which was approved on December 14, 1998, to allow the development of a commercial/condominium complex, with 7,007 square feet of retail space, forty eight (48) 2-bedroom condominium units and related improvements on approximately 76,739 square feet of land. Final Plan Approval for the project was issued on June 6, 2007. On September 19, 2008, the Planning Commission granted a five-year extension of the time to complete construction. On May 15, 2014, another amendment was approved to allow a five-year time extension or until May 15, 2019, to comply with Condition No. 2. The most recent Plan Approval, dated May 22, 2017, approved four levels of timeshare resort units above an existing concrete parking garage. The proposed development will consist of forty six (46) 3-bedroom units with 119 parking stalls and perimeter landscaping. Previously, the total combined area of 76,739 square feet consisted of parcel numbers 11, 16, 26, 78, and 80, and portions of property (parcel numbers 11, 78 and 80) were used for a mini golf facility. Since that time, the parcels have been consolidated into one parcel totaling 76,739 square feet. Condition No. 2 states:

"Construction of the proposed development shall be completed within 5 years from the effective date of this amendment."

The applicant cites the reasons for the delay since the approval of the previous time extension amendment request, which include fiscal challenges with the previously proposed design of the project that make it impossible to meet the current deadline to complete construction. After assuming ownership of the property in 2013, Diamond Resorts had the opportunity to conduct a feasibility study to determine the current actual cost for the original design of the project. The study revealed that the actual cost exceeded the budget allotted for the project by a range of 20 to 30 million dollars. The applicant has stated that the design is currently being modified to make it economically feasible for build out and completion. The redesign effort has caused significant delays that have led to this time extension request.

Several building permits have been issued and final inspections completed for construction of retaining walls, structural columns for the foundation and an elevated concrete slab. An electrical permit was issued and final inspection completed for the installation of empty electrical conduit. Construction is currently on hold pending the approval of the amendment request to SMA Use Permit Condition No. 2 for a time extension to complete construction. Additionally, the applicant states that the design is currently in the process of being modified. Final plan approval stipulates that there shall be no modifications to plans without prior written approval of such changes by the Planning Department. The current plan approval expired on May 21, 2019.

The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and are not the result of their fault or negligence. According to the applicant, there were numerous reasons for the delay, which include fiscal challenges with the previously proposed design of the project that make it impossible to meet the current deadline to complete construction. After assuming ownership of the property in 2013, Diamond Resorts had the opportunity to conduct a feasibility study to determine the current actual cost for the original design of the project. The study revealed that the actual cost exceeded the budget allotted for the project by a range of 20 to 30 million dollars. The applicant has stated that the design is currently being modified to make it economically

feasible for build out and completion. The redesign effort has caused significant delays that have led to this time extension request. Therefore, the non-performance was a result of conditions that could not have been foreseen by the applicant and are not the result of the applicant's fault or negligence.

Granting of the time extension would not be contrary to the General Plan, Kona Community Development Plan or Zoning Code. The General Plan designation for this area is Resort Node, which allows for a mix of visitor-related uses such as hotels, condominium-hotels (condominiums developed and/or operated as hotels), single-family and multiple-family residential units, golf course and other typical resort recreational facilities, resort commercial complexes and other support services. Only Major Resort Areas are identified as Resort Nodes on the LUPAG Map. The property is zoned Resort-Hotel District (V-.75). The Kona Community Development Plan (CDP), adopted in 2008, includes the subject property in the Urban Area. The granting of the time extension would not be contrary to the objectives and policies of General Plan, the Kona CDP or the Zoning Code.

Granting of the time extension would not be contrary to the original reasons for the granting of the Special Management Area Use Permit. The original reasons for the approval of Special Management Area Use Permit No. 388, and its amendments, are still applicable today and the request is not contrary to these reasons. Based on the discussion above, the request for a 5-year time extension to Condition No. 2 (time to complete construction) of SMA Use Permit No. 388 would not be contrary to the General Plan or Zoning Code nor the original reasons for granting of the permit. It is recommended that the Planning Commission approve the request with the following changes to conditions. (Material to be deleted is bracketed and struck-through; new material is underscored):

1. The applicant, its successor or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Construction of the proposed development shall be completed within 5 years from the effective date of this [~~second~~] third amendment.

3. A sewer line shall be installed to tie in with the Ali'i Drive Interceptor Sewer meeting with the approval of the Department of Environmental Management.
4. Ali'i Drive and Kahakai Road shall be improved along the property's frontage with curb, gutter, and sidewalk construction, pavement widening, drainage improvements, and relocation of utilities along the Ali'i Drive and Kahakai Road frontages meeting with the approval of the Department of Public Works. The street widening and roadside improvements required by this condition shall be installed along an alignment meeting with the approval of the Department of Public Works. Any portion of the subject parcel upon which the improvements to meet this condition are installed, shall be subdivided and dedicated to the County, upon satisfactory completion and prior to the issuance of a Certificate of Occupancy, at no cost to the County.
5. Should any remains of unidentified historic sites such as rock walls, terraces, platforms, or human burials, lava tube or cave systems be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
6. If the applicant should require an additional extension of time, the applicant shall submit the request to the Planning Commission for appropriate action.

Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.